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Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Australia

-- 2022 --

This report is submitted by Australia to the Competition Committee FOR INFORMATION.

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Australia

1. Executive Summary

1. This report primarily focuses on the competition activities of the Australian Competition and Consumer Commission (ACCC) in the 2022 calendar year. The ACCC is responsible for enforcing compliance with the *Competition and Consumer Act 2010 (CCA)*, which is the principal instrument of Australia's competition law. A range of other agencies are responsible for developing and implementing Australia's competition policy. The roles of these agencies are outlined in Section 3 of this report.

2. In 2022, the ACCC continued to work with these government departments and agencies, as well as consumer groups, industry associations and international counterparts. Such collaboration with key stakeholders is an important component of the effectiveness of the ACCC in carrying out its competition mandate. The ACCC regularly discussed issues of importance and intersection including the approach to international cartels, mergers and emerging issues with overseas counterparts, both bilaterally and through networks. Global engagement for 2022 included participation in the Organisation for Economic Co-operation and Development, International Competition Network, and the Competition Law Implementation Program, which supports Association of Southeast Asian Nations (ASEAN) member states. In 2022–23, Australia also took up the presidency of the International Consumer Protection and Enforcement Network, aiming to bring positive outcomes for consumer protection worldwide.

3. In executing its mandate as Australia's national competition, consumer, fair trading and product safety regulator, the ACCC has also been adaptive and responsive to emerging issues worldwide. This included the 2022 impact of global and domestic supply chain disruptions, climate change, rapid development of the digital economy, the war in Ukraine, and the range of inflationary pressures. The ACCC in early 2022, announced its competition priorities: including competition issues in global and domestic supply chains (particularly where they continued to be disrupted by the COVID-19 pandemic); competition issues arising from the pricing and selling of **essential services**, with a focus on **energy and telecommunications**; restrictive practices in financial services with a particular focus on payments systems and exclusive arrangements by firms with market power that impact competition, together with the enduring priority of detecting, disrupting and deterring cartel conduct. Furthermore, in the face of global and domestic energy market challenges throughout 2022, the ACCC played a critical role in helping to provide Government with greater transparency around the factors influencing the volatility in domestic energy prices. Similarly, in the face of heightened global and domestic concerns about the environment and sustainability, claims about environmental benefits and sustainability became an important priority not only in consumer protection but also as a competition issue due to the potential for anti-competitive behaviour to arise as new markets emerge and older markets contract.

4. Within the first quarter of 2022, the ACCC also welcomed its new Chair Gina Cass-Gottlieb, and ACCC Commissioner Liza Carver. As two widely recognised competition lawyers and leading regulatory experts, both Ms Cass-Gottlieb and Ms Carver brought a wealth of expertise to the agency.

5. Although the 2022 year continued to be influenced by the COVID-19 pandemic, the ACCC achieved a substantial suite of outcomes that enhanced the welfare of Australians. The ACCC was heavily engaged in promoting competition in key markets,

addressing and preventing anti-competitive conduct, protecting consumers and small businesses from unfair trading, undertaking market studies and inquiries to contribute to improved market outcomes, assessing mergers to prevent changes in market structure that substantially lessen competition, and seeking to improve consumer choice.

1.1. Compliance and enforcement

6. The ACCC continued its strong focus on its compliance and enforcement priorities, securing significant outcomes that sent a strong deterrence message. The ACCC was also active in a range of cases involving alleged anti-competitive conduct, and cartel conduct. Across competition, consumer and fair-trading matters, total penalties of \$231.6m (AUD) were awarded by the Australian courts.

1.2. Anti-competitive and unfair trading conduct

7. Australia continued to strengthen regulation of anti-competitive and unfair trading conduct, with the legislation introducing contraventions and penalties for unfair contract terms and the substantial increase in penalties for anti-competitive and unfair trading conduct. The reform agenda includes consideration of recommendations for an across the economy unfair trading practices prohibition and the ACCC's proposal for new service-specific mandatory codes of conduct for large digital platforms to address anti-competitive conduct, based on principles set out in legislation.

1.3. Merger activity

8. There was an upsurge in mergers and acquisitions activity in Australia and globally during the past 2 years; 2021-2022. The ACCC also noted increasing numbers of complex, often global, transactions coming forward for its review.

1.4. Digital markets

9. In 2022, the ACCC published the fourth and fifth interim reports of the ACCC's 5-year Digital Platform Services Inquiry (DPSI). The fourth report focussed on competition and consumer issues associated with general online retail marketplace services. The fifth report considered options for addressing harms to competition, consumers, and business users in digital platform service markets, and ultimately recommended new competition and consumer measures for digital platforms.

1.5. Market Inquiries

10. Apart from the aforementioned DPSI, the ACCC continued to undertake in-depth market inquiries in 2022. These related to regional mobile infrastructure, a gas inquiry and a public inquiry into the prices, profits and margins in the supply of electricity in the national electricity market.

2. Changes to competition laws and policies, proposed or adopted

2.1. Summary of new legal provisions of competition law and related legislation

11. In 2022, there were a number of legislative changes made to Australia's competition law framework. These included:

2.1.1. Gas Market Energy Price Orders

- In December 2022, the Competition and Consumer Act (CCA) was amended to introduce a new part that relates to the gas market. Under this addition, the Minister can make orders, known as emergency gas market price orders, regulating the terms (including prices) on which gas is supplied or acquired.
- On 23 December 2022, the Gas Market Emergency Price Order came into effect, setting a price cap per gigajoule of gas sold by gas producers at wholesale to gas powered generators and commercial and industrial users in Australia for a period of 12 months.
- The CCA was also amended to prohibit specified conduct engaged in for the purpose of avoiding the application of an order and to allow for a mandatory code of conduct to be introduced, of which the ACCC is responsible for enforcing.

2.1.2. Penalties

- The *Treasury Laws Amendment (More Competition, Better Prices) Act 2022* also increased penalties for engaging in anti-competitive conduct (for example, cartels, misuse of market power, and exclusive dealing) under Part IV of the CCA and the Australian Consumer Law (ACL).
- The legislation updated the maximum pecuniary penalty provision for corporations where relevant as follows:
 - from \$10 million to \$50 million
 - from 10 per cent of a corporation's annual turnover to 30 per cent of turnover over the period the breach occurred
 - increase the maximum pecuniary penalty for individuals from \$500,000 to \$2.5 million
- These changes also apply to relevant provisions of Part IVBA (News Media and Digital Platforms Mandatory Bargaining Code); Part XIB (the Telecommunications industry); Part XICA (the Electricity Industry) of the CCA.
- The penalties legislation also introduced penalties for businesses that include unfair contract terms in their standard form contracts with consumers and small businesses. Previously, a Court could declare specific terms of a contract unfair and therefore void, but they were not prohibited, and the Court could not impose any penalties on businesses that included them in standard form contracts. The changes also expanded coverage to more small business contracts.

2.2. Other relevant measures, including new guidelines

12. The ACCC updated the following guidelines to reflect the availability of a new online lodgement system in 2022:

- [exclusive dealing notification process](#);
 - [resale price maintenance notification process](#);
 - [Authorisation of Conduct \(non-merger\)](#); and
- the [collective bargaining approval processes](#).
13. The ACCC also released the following new guidelines with relevant measures:
- Guidelines that relate to the [exercise of powers](#) in connection with the ACCC's functions, with a particular focus on the use of section 155 powers in the ACCC's enforcement and merger activities. As the circumstances of an informal merger review process can vary from a typical enforcement investigation, these guidelines referred to the use of section 155 powers in the course of a merger review where relevant.

2.3. Government proposals for new legislation

14. The ACCC's work includes a mandate to monitor certain sectors and conduct specific market inquiries pursuant to direction from government. On many occasions, monitoring reports, or inquiries in final reports often include recommendations for government. In several cases, following consideration by government, those recommendations have been implemented. Below are examples of the ACCC's 2022 recommendations to government for reform.

2.3.1. Proposals for digital platforms reform

15. The ACCC recommended a range of new measures to address competition and consumer harms in digital platform service markets.

16. On 11 November 2022, the ACCC released the fifth interim report of its five-year [Digital Platform Services Inquiry \(DPSI\) \(Regulatory Reform Report\)](#). This Report assessed the question of whether new measures were required to address harms to competition, consumers, and business users in digital platform markets. The report found that existing competition and consumer laws were not sufficient and new protections and measures were required.

17. Regarding consumer harms, the ACCC's Regulatory Reform Report recommended new laws that require digital platforms to:

- Provide user-friendly processes for consumers to report scams, harmful apps, and fake reviews, and respond to such reports.
- Reduce the risk of scams by verifying certain business users such as financial service providers, advertisers, app developers and merchants.
- Publish review verification processes to provide important information to readers of online reviews to help them assess the reliability of reviews on the platform.
- Report on scams, harmful apps and fake reviews on their services, and the measures taken to address them.
- Ensure consumers and small businesses can access appropriate dispute resolution, supported by the establishment of a new digital platform ombuds scheme.

18. To address competition concerns, the Regulatory Reform Report recommended a new ex ante regulatory regime which would require designated platforms to comply with service-specific codes of conduct. Only those platforms with the ability and incentive to

engage in anti-competitive conduct in respect of digital platform markets would be designated. Codes of conduct could include targeted obligations to address:

- anti-competitive self-preferencing
- anti-competitive tying
- exclusive pre-installation and default agreements that hinder competition
- impediments to consumer switching
- impediments to interoperability
- data-related barriers to entry and expansion, where privacy impacts can be managed
- a lack of transparency
- unfair dealings with business users
- exclusivity and price parity clauses in contracts with business users.

19. The Australian Government is considering the recommendations set out in the Regulatory Reform Report.

2.3.2. News Media Bargaining Code (NMBC)

20. The NMBC is a mandatory code of conduct which governs commercial relationships between news businesses and ‘designated’ digital platforms. While no platforms have been designated by the Treasurer¹, the code has led to Google and Meta reaching a number of voluntary commercial content deals with a range of large and small news media businesses after the legislation passed in March 2021. The ACCC understands that many of the agreements between the platforms and news media organisations may expire in 2024.

21. On 2 December 2022, the Australian Department of the Treasury (Treasury) released the report of its review of the Code on the extent to which the Code has delivered outcomes consistent with its policy objective. Treasury proposed a number of recommendations, including, relevantly to the ACCC, that the Government considers:

- introducing legislative amendments enabling the Treasurer to direct the ACCC to report on the availability of news on digital platforms and whether significant bargaining power imbalances exist between these platforms and news businesses
- in the context of the government response to the Regulatory Reform Report, considering whether ACCC information-gathering powers can be used to obtain information about commercial agreements between digital platforms and news businesses.

22. The Australian Government is currently considering the Treasury’s recommendations.

2.3.3. Regulation of essential monopoly infrastructure

23. The ACCC continued to advocate for more effective regulation of monopoly infrastructure, as well as improved frameworks for consideration of the competition

¹ The Australian Department of Treasury and Finance reports to the Treasurer

impacts at the time infrastructure is privatised. These issues were raised in the ACCC's April 2022 [submission](#) to the Australian Productivity Commission's Inquiry into Productivity Performance.

24. Mainly, the ACCC noted that the National Access Regime can potentially apply to conduct such as denial of access by vertically integrated monopolies. However, there is no general regulatory regime that can effectively deal with monopoly pricing and the impact of inefficient economic 'hold up' effects for users of the infrastructure. These have sometimes been dealt with on a sectoral basis, such as the regimes that apply in the energy sectors, but there is no general regulation that can adequately address these issues if they arise with infrastructure such as rail, ports or airports.

25. The ACCC also noted that many recent privatisations have seen governments maximise sale proceeds by selling assets without the application of adequate regulatory controls. In some cases, privatisations came not only with a lack of appropriate regulatory constraint but also with anti-competitive arrangements to protect an incumbent in a related market. The ACCC concluded that while it is important to avoid unnecessarily intrusive regulation, it is essential that appropriate regulatory arrangements are in place before assets with monopoly characteristics are privatised.

3. Enforcement of competition laws and policies

3.1. Action against anticompetitive practices, including agreements and abuses of dominant positions

26. The CCA prohibits a wide range of anti-competitive practices, including cartel conduct, contracts, arrangements, or understandings that substantially lessen competition, exclusive dealing that substantially lessens competition, secondary boycotts, misuse of substantial market power, mergers or acquisitions that are likely to substantially lessen competition, and resale price maintenance. The CCA also contains telecommunications specific competition laws.

27. The ACCC reviews its competition and consumer protection enforcement priorities annually and publishes them in its Compliance and Enforcement Policy. In 2022, the ACCC's competition priorities related to:

- Competition issues arising from the pricing and selling of **essential services**, with a focus on energy and telecommunications.
- Competition issues relating to digital platforms.
- Competition issues in global and domestic supply chains, particularly where they are disrupted by the COVID-19 pandemic.
- Promoting competition and investigating allegations of anti-competitive conduct in the financial services sector, with a focus on payment services.
- Exclusive arrangements by firms with market power that impact competition.
- Ensuring that small businesses receive the protections of the competition and consumer laws and industry codes of conduct, including in agriculture and franchising.
- Cartel conduct and anti-competitive conduct.

3.1.1. Summary of activities of competition authorities and courts

Strong compliance and enforcement outcomes

28. In 2022 the ACCC continued its strong focus on its compliance and enforcement priorities, securing significant competition outcomes that sent a strong deterrence message.

Unilateral conduct

29. In 2022 the ACCC instituted proceedings in the Federal Court against Mastercard Asia/Pacific Pte Ltd and Mastercard Asia/Pacific (Australia) Pty Ltd (together, Mastercard), for allegedly misusing its market power for the purpose of substantially lessening competition in the supply of debit card acceptance services. The ACCC also accepted a court enforceable undertaking from Australia's largest telco operator, Telstra, to address competition concerns about Telstra's registration of radiocommunications sites in low band spectrum that interfered with a competitor's plans to roll out its 5G network. In addition, proceedings which were previously instituted by the ACCC in the Federal Court against Australasian Food Group (Peters Ice Cream) in respect of an anti-competitive exclusive distribution arrangement, were settled during the period with the Federal Court imposing a \$12 million penalty.

Cartel and other conduct

30. The ACCC also instituted proceedings in four cartel related matters during 2022, including against mining equipment and technology services company Qteq Pty Ltd (Qteq) and its executive chairman, and Ashton Raggatt McDougall Pty Ltd (ARM Architecture) and its former managing director.

31. There were a number of court outcomes in relation to cartel matters, including:

- NQ Cranes Pty Ltd was ordered by the Federal Court of Australia to pay a \$1 million penalty after admitting that it had entered into an anti-competitive cartel agreement, following proceedings brought by the ACCC.
- Pharmaceutical company Alkaloids of Aust Pty Ltd and its former export manager were sentenced following criminal prosecution for price fixing.
- two Sydney suppliers of slate roofing services and the sole directors of each business were ordered to pay penalties totalling \$420,000, following proceedings brought by the ACCC.

32. The Federal Court also sentenced four individuals to suspended prison terms and imposed a one million dollar fine on Sydney money remittance business Vina Money in a prosecution conducted by the Commonwealth Director of Public Prosecutions (CDPP), following a joint investigation by the ACCC and the Australian Federal Police. These were the first individuals to be sentenced for criminal cartel conduct in Australia.

33. The Federal Court also found that construction company J Hutchinson Pty Ltd (Hutchinson) and the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) entered a boycott agreement and ordered them to pay pecuniary penalties.

3.1.2. Description of significant cases, including those with international implications

34. The ACCC initiated or publicly resolved several competition enforcement cases in 2022, including:

ACCC v Bluescope Steel Limited (No 5) [2022] FCA 1475

35. BlueScope Steel Limited and its former general manager of sales and marketing, Mr Jason Ellis, were found by the Federal Court to have attempted to induce eight steel distributors in Australia and an overseas manufacturer, Yieh Phui, to enter agreements to fix and/or raise the level of pricing for flat steel products supplied in Australia. Sentencing will occur in 2023.

ACCC v NQ Cranes Pty Ltd [2022] FCA 1383

36. NQ Cranes Pty Ltd was found to have entered into a cartel arrangement that had the purpose of allocating overhead crane service customers in parts of Queensland and the Newcastle region. The Federal Court of Australia imposed a \$1 million penalty.

CDPP v Bingo Industries Ltd

37. Bingo Industries entered guilty pleas in relation to criminal cartel conduct related to allegations of price fixing for demolition waste services in Sydney. Bingo was charged with the offences in August 2022 after an investigation by the ACCC and referral to the Commonwealth Director of Public Prosecutions (CDPP). Bingo's former manager and CEO (Daniel Tartak) was also charged with two criminal offences and pleaded guilty.

ACCC v First Class State Roofing Pty Ltd & Ors [2022] FCA 1093

38. The Federal Court found that the parties had engaged in bid rigging and ordered the two Sydney suppliers of slate roofing services and the directors of each business to pay penalties for cartel conduct. Collectively, pecuniary penalties of \$420,000 were ordered against the businesses and their directors.

CDPP v Vina Money Transfer Pty Ltd [2022] FCA 665

39. This case involved the first criminal cartel conviction imposing jail sentences.

40. Money transfer business Vina Money Transfer Pty Ltd and 5 individuals were committed to the Federal Court for trial on criminal cartel charges. The cartel conduct involved alleged fixing of the Australian dollar/Vietnamese dong exchange rate and fees charged to their customers. In early 2022, 5 of the 6 accused (4 individuals and 1 company) entered pleas of guilty for their involvement in the alleged conduct. The court sentenced each of the 4 individuals to differing terms of imprisonment. All were released forthwith on a recognizance release order to be of good behaviour. A fine of \$1,000,000 was imposed on Vina Money.

CDPP v Alkaloids of Australia Pty Ltd [2022] FCA 1424

41. The charges in this case related to cartel conduct engaged in over a period of about 8 years from July 2009, when criminal cartel laws came into force in Australia. A guilty plea was received and a fine of \$1,987,500 was issued.

42. The Federal Court sentenced a family-owned Australian pharmaceutical company for engaging in criminal cartel conduct involving price fixing, output restriction, bid rigging and market allocation cartel arrangements between Alkaloids of Australia and other international SNBB suppliers.

CDPP v Joyce [2022] FCA 1423

43. Alkaloid's former export manager, Christopher Kenneth Joyce, was also convicted and was sentenced to two years and eight months' imprisonment to be served as an intensive corrections order, including 400 hours of community service. A \$50,000 fine was also issued, and Joyce was disqualified from directorship.

ACCC v J Hutchinson Pty Ltd [2022] FCA 98

44. The Federal Court found that Hutchinson and the CFMMEU had entered and given effect to an agreement to boycott a subcontractor at a building site in Brisbane. The CFMMEU was found to have been knowingly concerned in, or party to, the contraventions and that it induced Hutchinson's contraventions by threatening or implying that there would be conflict with, or industrial action by, the CFMMEU if Hutchinson did not stop using the subcontractor.

CDPP v ANZ & Ors, case number 2018/00175183

45. In February 2022, the Commonwealth Director of Public Prosecutions (CDPP) withdrew criminal cartel charges against 3 major banks and 6 senior individuals in relation to alleged cartel conduct arising from an ANZ institutional share placement.

ACCC v Australasian Food Group Pty Ltd [2022] FCA 665

46. In March 2022, the Federal Court ordered that Australasian Food Group, trading as Peters Ice Cream, pay a \$12 million penalty for anti-competitive conduct relating to exclusive dealings in relation to the sale of ice-cream at service stations.

ACCC v Mastercard AsiaPacific Pte Ltd and Mastercard AsiaPacific (Australia)

47. The ACCC instituted proceedings against Mastercard Asia/Pacific Pte Ltd and Mastercard Asia/Pacific (Australia) Pty Ltd, for allegedly engaging in conduct with the purpose of substantially lessening competition in the supply of debit card acceptance services.

During 2022 the ACCC accepted court enforceable undertakings from:

- Lawn Solutions Australia Group Pty Ltd (LSA) regarding concerns about concerted practices.
- N.A.S.R. Incorporated, trading as Speedway Australia, regarding competition concerns in relation to speedway racing.

3.2. Mergers and acquisitions

- There has been an upsurge in mergers and acquisitions activity in Australia and globally in the past 2 years, 2021 to 2022, which has resulted in a significant rise in merger notifications to the ACCC.
- Section 50 of the CCA prohibits mergers and acquisitions that would have, or are likely to have, the effect of substantially lessening competition in any market in Australia.
- In Australia, there is no compulsory pre-merger notification process. However, parties are encouraged to approach the ACCC on a voluntary basis to seek the ACCC's view on whether a proposed merger or acquisition is likely to substantially

lessen competition – this review option is commonly referred to as the ‘informal review process’ as the decision and process are not underpinned by legislation.

- An alternative to the informal review process is merger authorisation which is a voluntary but formal process that enables the ACCC to assess the likely public benefits (such as efficiencies) and public detriments resulting from the proposed merger, in addition to the likely effect on competition. Merger parties may lodge an application for authorisation which, if granted, provides protection from legal action under the mergers law. In 2022, the ACCC finalised its assessment of one application for merger authorisation. Two further applications received in 2022 remain under consideration.
- Where the ACCC has concerns that a proposed merger or acquisition may, or may be likely to, substantially lessen competition in contravention of section 50 of the CCA, it may accept a court enforceable undertaking from the merger parties under section 87B of the CCA to remedy those concerns. The ACCC can also challenge a merger if parties decide to proceed by applying to the Federal Court to determine whether the merger breaches section 50 of the CCA.

3.2.1. Statistics on number, size, and type of mergers notified and/or controlled under competition laws

Number of merger assessments

48. In calendar year 2022, the ACCC assessed* 391 mergers, of which 24 underwent an informal public review, and 346 were pre-assessed as not requiring a public review.

49. As noted above, the ACCC received 3 applications for merger authorisation in 2022, 1 of which was finalised.

50. *The majority of these merger assessments progressed to a final decision in 2022 however some were withdrawn by the parties prior to reaching this stage.

51. Size: Unknown

Types of mergers notified/controlled under competition laws

52. In Australia, merger parties have two avenues available to have a merger considered and assessed:

1. The ACCC assesses the merger on an informal basis applying a substantial lessening of competition test.
2. The ACCC assesses applications for merger authorisation by applying a test which requires the ACCC to be satisfied that either the proposed merger is not likely to substantially lessen competition, or the likely public benefits outweigh the likely public detriments resulting from the proposed merger.

3.2.2. Summary of significant cases

Significant merger reviews

53. The ACCC's informal merger review regime is not set out in legislation and therefore there is no prescribed structured tier-based merger review system—the depth or significance of a review is determined on a case-by-case basis.

54. However, reviews that result in the ACCC issuing a Statement of Issues, and/or in remedies being proffered by the merger parties, or include the commencement of court proceedings to restrain or prevent a merger, provide a useful, but imperfect, proxy to identify mergers that led to an in-depth (or significant) review. A Statement of Issues is a public statement released by the ACCC outlining the basis and facts upon which the ACCC came to a preliminary view that a proposed merger or acquisition raises competition concerns and requires further investigation.

55. Where the ACCC has concerns that a proposed merger or acquisition would, or would be likely to, substantially lessen competition in contravention of section 50 of the CCA, it may accept a court enforceable undertaking from the merger parties under section 87B of the CCA to remedy those concerns.

56. In 2022, the ACCC did not oppose 6 mergers subject to remedies accepted from the merger parties:

- Culligan Group - Waterlogic Group Holdings Limited
- Aurizon Holdings Ltd - One Rail Australia Holdings LP
- Dye & Durham Corporation - Link Administration Holdings
- Zoetis Australia Research and Manufacturing Pty Ltd - Betrola Investments Pty Ltd (including Jurox Pty Ltd)
- THL Group (Australia) Pty Ltd - Apollo Tourism & Leisure Ltd
- Endeavour Group Limited - each of the Beach Hotel, Crown Inn, Tower Hotel and Whitehorse Inn located in South Australia

57. In 2022, there were 3 mergers where the merger parties decided not to proceed with the proposed acquisition after the release of a Statement of Issues:

- Forestry Corporation of NSW - Hume Forests Ltd
- Spirit Super and Palisade Investment Partners Consortium - Port of Geelong
- Cargotec Corporation - Konecranes Plc

58. In 2022, the ACCC denied merger authorisation in one matter:

- Telstra Corporation Limited and TPG Telecom Limited proposed network and spectrum sharing.

59. The ACCC decided not to grant authorisation for the regional mobile network sharing deal between Telstra and TPG. The proposed commercial arrangement comprised of a Multi-Operator Core Network (MOCN NaaS) Service Agreement, a Spectrum Authorisation Agreement, and a Mobile Site Transition Agreement. The ACCC was not satisfied, in all the circumstances, that the Proposed Transaction would not be likely to substantially lessen competition, or would be likely to result in a benefit to the public that would outweigh the public detriment from the Proposed Transaction. Telstra and TPG have sought review of the ACCC's decision in the Australian Competition Tribunal.

4. The role of competition authorities in the formulation and implementation of other policies, e.g., regulatory reform, trade and industrial policies

60. The principal government departments/agencies involved in the development, implementation, administration and enforcement of competition policy and laws are detailed below.

4.1. The Treasury

- Amongst other functions, the Treasury advises the Government on competition law and policy, including advice on the economic regulation of infrastructure and broader product markets.
- More information can be found at <https://www.treasury.gov.au/>.

4.2. The Australian Competition and Consumer Commission

- The ACCC is an independent statutory authority that enforces the CCA. The CCA, including prohibitions in relation to anti-competitive conduct, apply to virtually all businesses in Australia.
- The ACCC has responsibilities in industry regulation that include promoting efficient investment and access to monopoly rail infrastructure, access to wheat ports, monitoring prices and service quality for Australia's four major airports, providing information on the performance of Australia's container stevedoring industry, regulating and monitoring a range of water charges, and monitoring and enforcing compliance with water market and charge rules.
- In 2022 the ACCC continued its role in monitoring fuel prices, costs and profits, and provided a report on these each quarter. Following the government's temporary cut in fuel excise in March 2022, the ACCC worked with fuel retailers to set out expectations that the savings would be passed onto consumers and to remind them that ACCC would be monitoring their margins. The ACCC can compel refiners, importers, terminal operators, wholesalers and retailers to provide information relating to fuel prices where necessary.

4.2.1. *Pandemic response and supply chain issues*

- The ACCC commenced 2022 facing continued uncertainties and severe economic and social impacts of the COVID-19 pandemic. Supply chain disruptions meant the ACCC continued to receive urgent exemption applications during 2021–22, including in the education, medical and financial services sectors. The ACCC's Container Stevedoring Monitoring report detailed how the COVID-19 pandemic had destabilised the global container freight supply chain.

4.2.2. *Energy market challenges*

- The ACCC played a critical role informing government policy across a range of energy market challenges throughout 2022. These conditions led to a direction from the Treasurer in June 2022 to use the ACCC's full information gathering powers to provide greater transparency around the factors influencing electricity and gas prices. Later in the year, the ACCC worked closely with Treasury to provide expertise in the development of policy interventions in the domestic gas market.

- In June 2022, the ACCC published the seventh report in its inquiry into prices, profits and margins in the National Electricity Market. The ACCC also granted temporary authorisation for a range of measures allowing participants in the gas and electricity markets to work together to support Australia's security of energy supply and systems during an emergency period with volatile wholesale energy costs, baseload generator outages, and severe weather disruptions to generation.

4.2.3. Telecommunications

- In 2022, the ACCC undertook a range of compliance, enforcement and regulatory initiatives to promote competition in the telecommunications sector. In August 2022, the ACCC accepted an undertaking from Telstra to address competition concerns regarding 5G sites. In October 2022, the ACCC further published guidance to the industry about complying with statutory carrier separation rules when offering retail services over networks they control and updated its guidance on making broadband speed claims. The ACCC also consulted stakeholders on changes to regulatory settings for access to the National Broadband Network (NBN) and other superfast broadband networks.
- More information can be found at <https://www.accc.gov.au/>.

4.3. The Australian Energy Regulator

- The Australian Energy Regulator (AER) is the economic regulator of the electricity transmission and distribution networks and is responsible for monitoring the wholesale electricity market and enforcing the National Electricity Law and National Electricity Rules in the National Electricity Market (NEM). The AER is also responsible for the economic regulation of gas transmission and distribution networks and enforcing the National Gas Law and National Gas Rules in all jurisdictions except Western Australia. The AER also regulates retail markets (other than retail pricing) in all states that have adopted the National Energy Customer Framework.
- While separate agencies with specific functions that vary according to their legislated responsibilities, the ACCC and AER share many common objectives, both working to protect, strengthen and supplement competitive market processes. Recognising this, the ACCC and AER work closely together, including by being co-located and utilising shared resources, including staff and systems.
- More information can be found at <https://www.aer.gov.au/>.

4.4. The National Competition Council

- The National Competition Council (NCC) considers applications in relation to third party access to major infrastructure services under Part IIIA of the CCA, and makes recommendations to the relevant decision-making Ministers. The NCC has a similar role under the National Gas Law.
- More information can be found at <https://www.ncc.gov.au/>.

4.5. The Productivity Commission

- The Productivity Commission (PC), an independent statutory authority, is the Australian Government's principal review and advisory body on microeconomic

policy and regulation and undertakes public inquiries and other research in response to terms of reference provided by the Australian Government. The PC also undertakes self-initiated research.

- More information can be found at <https://www.pc.gov.au/>.

4.6. The Australian Competition Tribunal

- The Tribunal is an independent statutory tribunal whose primary role is to review decisions of the ACCC, the AER and responsible Ministers under Part IIIA of the CCA.
- More information can be found at <https://www.competitiontribunal.gov.au/>.

5. Resources of competition authorities

5.1. Resources overall (current numbers and change over previous year)

5.1.1. Annual budget (in AUD and USD):

61. The ACCC and AER's total funding is provided by an Australian financial year which is from 1 July – 30 June.

62. **Table 1** outlines the total funding appropriations for the financial years 2021-22, and 2022-23.

Table 1.

ACCC and AER Budget (agency wide)	
2021-22	2022-23
\$288,855,000	\$297,810,000
\$193,883,808	\$199,894,538

Note: Exchange rate as at 23 March 2023 – A\$1 = US\$0.67

Please note, this total budget encompasses all ACCC and AER functions (which are broader than competition related areas, including consumer protection, product safety, infrastructure regulation and market studies). It also includes corporate budget and overheads.

5.1.2. Number of employees (person-years):

Economists –

63. The total number of non-administrative staff who have the role of economist is **10 FTE** employees.

64. Note: this reflects the number of economists who work on both competition and consumer protection matters.

Lawyers –

65. The total number of non-administrative staff who are lawyers that work on competition, consumer protection and merger matters is **33 FTE** employees. It does not include paralegals or interns

Other professionals –

66. The number of non-administrative staff who perform data science functions is **17 FTE** employees.

Support staff –

67. The total number of administrative staff who perform administrative support to core line areas of the ACCC and AER is **44 FTE**.

All staff combined –

68. The total number of active ACCC and AER staff was 1420 FTE.

5.2. Human resources (person-years) applied to various areas:*5.2.1. Enforcement against anticompetitive practices –**Cartels*

69. The number of non-administrative staff who work on **cartel related** matters is approximately **33 FTE employees**. This figure includes contractors, but does not include lawyers, economists, paralegals or interns who may also contribute to these areas.

Competition Enforcement (Part IV of the CCA)

The number of non-administrative staff who work on **competition enforcement** related matters (including anti-competitive mergers, but not including cartels) is approximately **63 FTE employees**.

70. This figure includes ACCC staff and contractors analysing conduct that may substantially lessen competition, including abuse of market power. It does not include lawyers, economists, paralegals or interns who may also contribute to these areas.

5.2.2. Merger review–

71. The ACCC merger review area had approximately **73 FTE employees**.

72. This figure includes contractors, but does not include lawyers, economists, paralegals or interns who may also contribute to this work.

5.2.3. Advocacy efforts –

73. The number of non-administrative staff who work on competition advocacy efforts is approximately **17 FTE employees**.

74. This figure includes staff who work in the International Unit, Competition Law Implementation Program (CLIP), Government Relations and Advocacy teams. It does not include admin or support staff.

5.3. Period covered by the above information

- The answer provided by Table 1 in question 4.1 covers two financial years (in Australia one financial period covers 1 July to 30 June)
- The answers provided for questions 4.1.2 and 4.2 are covered for the 2022 calendar year, and was counted as at the date of 31 December 2022.

6. Summaries of or references to new reports and studies on competition policy issues

75. The ACCC undertakes in-depth market, sector or industry reviews (either a monitoring report or market inquiry) with the aim of improving understanding of industry practices and dynamics in those sectors. The ACCC publishes its reviews in a formal report to help inform consumers, encourage public debate over competition and consumer matters and inform policy consideration.

6.1. ACCC Market Inquiries

6.1.1. Digital platform services inquiry

- The *Competition and Consumer (Price Inquiry – Digital Platforms) Direction 2020* requires the ACCC to conduct an inquiry into digital platform services (Digital Platform Services Inquiry) and provide interim reports to the Treasurer every 6 months. The DPSI runs from 2020 to 2025, with the final report due on 31 March 2025.
- On 28 April 2022, the ACCC released its fourth interim report in the Digital Platform Services Inquiry (DPSI). In this report, the ACCC examined whether online marketplaces were promoting fair and competitive markets for consumers and sellers. The report highlighted a range of concerns about how online marketplaces operate, as well as the significant benefits they provide to consumers and sellers. It found that online marketplaces have a high level of control and involvement in transactions between consumers and sellers on their platforms.
- On 11 November 2022, the ACCC released the fifth interim report for the Digital Platform Services Inquiry (DPSI). The report considered competition and consumer issues identified in the course of the Digital Platform Services Inquiry, the ACCC's Digital Advertising Services Inquiry and the original Digital Platforms Inquiry. The ACCC recommended a range of new measures to address harms from digital platforms to Australian consumers, small businesses, and competition. In addition to consumer and competition specific recommendations for digital platforms (discussed earlier), the report also reiterates the ACCC's support for economy-wide reforms to consumer law.

6.1.2. Inquiry into the National Electricity Market

- On 23 November 2022, the ACCC released a report regarding an inquiry into the National Electricity Market. The ACCC's report examined the impact of current market conditions on competition in the retail and financial electricity markets, and consequent impacts on consumers. This report followed a year of significant disruption in Australian electricity markets, with many of the factors driving high and volatile prices being found to likely continue.

6.1.3. Gas inquiry

- On 19 April 2017, the Australian Government directed the ACCC to conduct a wide-ranging inquiry into the supply of and demand for natural gas in Australia, and to publish regular information on the supply and pricing of gas for the next 3 years. On 25 July 2019, the Treasurer wrote to the ACCC extending the inquiry until December 2025.

6.1.4. Electricity market monitoring inquiry

- On 20 August 2018, the Treasurer directed the ACCC to hold a public inquiry into the prices, profits and margins in the supply of electricity in the national electricity market. The terms of reference required a first report by 31 March 2019 and then every 6 months until the end of the inquiry on 31 August 2025.

6.2. Monitoring reports

76. The ACCC also has several regulatory functions in national infrastructure industries. One part of that function is a role in monitoring and providing reports to give advice when asked by governments and policy agencies. This includes how efficient regulatory outcomes and competitive, well-functioning markets can be achieved.

77. The ACCC's monitoring role are in areas such as fuel and petrol prices, container stevedoring monitoring, electricity and for certain insurance products. The ACCC collects data to monitor prices, costs and profits and provide reports. Monitoring reports that analyse bulk grain exports, for example are produced. The ACCC further oversees prices for some services where competition is limited, for example in airports and aviation and postal services.